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2
3 THE HONORABLE JUDGE THOMAS ZILLY
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10 UNITED STATES DISTRICT COURT FOR THE
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE
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14

15 ERIC MATTHEW SCHOENBERG,
16
17 Plaintiff,

v.

18 WINDSTAR CRUISES LLC, et al,
19 Defendants.
20

No. 2:20-cv-01485-TSZ

MOTION TO RECONSIDER THE
COURT'S ORDER DENYING
PLAINTIFF'S COUNSEL MOTION
TOWITHDRAW AS PLAINTIFFS'
COUNSEL OF RECORD PURSUANT
TO FCRP 7.3(B)

NOTED FOR HEARING:

APRIL 8, 2021

21 **I. MOTION TO WITHDRAW**

22 COMES NOW Attorney James McCanna and respectfully moves the court to
23 reconsider its order denying his request to withdraw as attorney of record for Plaintiff Eric
24 Schoenberg in the above referenced matter. This motion is made pursuant to Fed. R. Civ. R.
25 7.3(b) and based on the subjoined declaration of counsel.

26 Rule 7.3(b) states that

27 MOTION TO RECONSIDER MOTION TO
WITHDRAW - 1

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1 (b) Non-Dispositive Orders. Parties seeking reconsideration of non-dispositive orders must
2 file a motion within 14 days after the order is filed unless the court extends the time. A
3 motion to reconsider must be based on:
4 (1) an intervening change in controlling law;
5 (2) the availability of new evidence; or
6 (3) the need to correct clear error or prevent manifest injustice.

7 In this instance, there is new evidence to support Plaintiff's counsel's motion to
8 withdraw as described in the Declaration of James McCanna below.

9 Denial of this motion would be manifestly unjust to force Mr. McCanna to continue
10 to represent a wholly unresponsive client.

11 RESPECTFULLY SUBMITTED this 8th day of April, 2021.

12 /s/ JAMES MCCANNA

13 James McCanna, WSBA # 22565
14 McCanna Law, PLLC
15 P.O. Box 468
Kingston, WA 98346

16 **II. DECLARATION OF COUNSEL**

17 COMES NOW James McCanna, under penalty of perjury under the laws of the
18 State of Washington, and deposes and testifies as follows:

20 1. I am the attorney of record for Plaintiff Eric Schoenberg in this matter, I make this
21 declaration based upon personal knowledge, and I am competent to make the same.

22 2. As indicated in my initial motion and surreply, I had sent a certified letter to
23 Plaintiff Schoenberg letting him know I was withdrawing. It was returned to me. As a
24 result, I no longer had a good last known address. I attach the returned letter as Exhibit 1 to
25 this Declaration and Motion.

1 3. I failed to certify that my motion to withdraw on defense counsel and on the
2 plaintiff when I filed my motion to withdraw. That was my error in failing to do that and I
3 apologize to the court and to defense counsel.

4 4. Despite failing to certify service on Plaintiff in my initial Motion to Withdraw, I did
5 serve Plaintiff with the motion to withdraw via email at ericmschoenberg@icloud.com on
6 March 11, 2021, the day I filed the initial motion. Since I had received the certified letter
7 back I served him via email.

8 5. I first learned of Plaintiff's criminal drug convictions when I received Defendant's
9 Response to my initial motion to withdraw. This evidence was new to me and would have
10 certainly shaped my assessment of the case had I known.

12 6. Prior to that time, I was unaware of any substance abuse issues that my client may
13 be facing.

14 7. Immediately after receiving the court's order denying my motion to withdraw on
15 April 2, 2021, I sent an email and left a voicemail for Mr. Schoenberg and advised him that
16 the court denied my motion, that I was still his lawyer and he must contact me immediately.

18 8. On April 2, 2021, I called his mother and advised her the of same. She confirmed
19 that there was a drug use issue. I told her that would have been important for me to know
20 and she said that she would have thought he would tell me. I asked that if she heard from
21 him to get him to contact me.

22 9. Despite these efforts I still have not had any response from plaintiff since February
23 2021.

25 10. I do not know where he is living.

26 11. I do not know what he wishes to do with this lawsuit.

12. I have a good-faith belief that the attorney-client relationship has irreparably broken
1 down under these facts.
2

3 13. I have made extensive efforts to communicate with my client and he has not
4 responded.

5 14. I renew my request to be allowed to withdraw.

6 Signed 4/8/21,

7 By: /s/ James McCanna
8 James K. McCanna, WSBA NO. 22565
McCanna Law, PLLC
9 P.O. Box 468
Phone: (360) 297-4057
Fax: (360) 297-4157
Email: jmccanna@mccannalaw.com

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13 CERTIFICATE OF SERVICE

14 I CERTIFY that on the 8th day of April, 2021, I served a copy of this motion for
15 reconsideration on by email to Katharine Tylee Herz at KateTyleeHerz@dwt.com and via
16 the court's portal.

17 I CERTIFY that I served this motion on Plaintiff Eric Schoenberg at
18 ericmschoenberg@icloud.com and at his last known address of **Eric Schoenberg**
19 1819 23rd Avenue, Apt. 308W Seattle, WA 98122 via U.S. Mail First Class, postage-
20 prepaid.

22 Dated April 8, 2021.

23 /s/James McCanna
24 James K. McCanna
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25 P.O. Box 468
Kingston, WA 98346
26 (360) 297-4057
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